



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

November 12, 2021

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Juan Jimenez**
Tax Registry No. 932829
Military and Extended Leave Desk
Disciplinary Case No. 2019-21096

The above named member of the service appeared before Assistant Deputy Commissioner Nancy R. Ryan on July 6 and July 8 and was charged with the following:

DISCIPLINARY CASE NO. 2019-21096

1. Said Detective Juan Jimenez, while assigned to the Special Victims Division, while off-duty, on or about July 23, 2019, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit; said Detective used his hand to touch the buttocks of an individual known to the Department less than thirteen years of age.

P.G. 203-10, Page 1, Paragraph 5

N.Y. Penal Law 130.65

N.Y. Penal Law 260.10

**PUBLIC CONTACT –
PROHIBITED CONDUCT
SEXUAL ABUSE IN THE FIRST
DEGREE
ENDANGERING THE
WELFARE OF A CHILD**

2. Said Detective Juan Jimenez, while assigned to the Special Victims Division, while on Suspension Duty Status, on or about November 6, 2020, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit; said Detective represented himself as an on-duty Member of the Service assigned to Special Victims Division to an individual known to the Department to gain information regarding to his own personal matter unrelated to the Department (*As added.*)

P.G. 203-10, Page 1, Paragraph 5

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated August 23, 2021, Assistant Deputy Commissioner Nancy R. Ryan found Detective Juan Jimenez Not Guilty of Specification No. 1 and Guilty of Specification No. 2, in Disciplinary Case No. 2019-21096. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and issues concerning the misconduct for which Detective Jimenez has been found Guilty and deem that separation from the Department is warranted.

A review of Detective Jimenez's discipline history revealed a prior matter in which Detective Jimenez conducted an investigation, while off-duty, concerning a matter in which he was personally involved. Detective Jimenez had wrongfully stopped five teenaged individuals at gunpoint for an incident that occurred with his father several days earlier. The incident involving Detective Jimenez's father was already being investigated by the Department, yet, Detective Jimenez decided that he would take personal action by following and stopping the individuals at gunpoint. None of the stopped individuals were positively identified as being involved in the incident with Detective Jimenez's father. For that matter, Detective Jimenez received a penalty of thirty (30) vacation days and was placed on dismissal probation.

In the instant matter, Detective Jimenez conducted an investigation by attempting to obtain evidence in a matter in which he was personally involved by identifying himself as a NYPD detective from the Special Victims Unit. At the time Detective Jimenez attempted to obtain the evidence, he was actually on suspended with pay status. It should be noted that Detective Jimenez was aware that the underlying matter in which he decided to take investigatory action was already under investigation by the Department. As noted by Assistant Deputy Commissioner Ryan "There was quite simply no reason for Respondent to identify himself as a "Special Victims" detective, or as an NYPD officer at all..." Further, Assistant Deputy Commissioner Ryan found that Detective Jimenez's actions "reflected quite poorly on the Department..." I agree.

Detective Jimenez has demonstrated repeated off-duty misconduct which the undersigned finds to be prejudicial to the good order and efficiency of the Department. On two separate occasions, Detective Jimenez took police related actions in matters already under investigation and in which he or his family members were personally involved. While, I agree with the findings of Assistant Deputy Commissioner Ryan, I disagree with the penalty recommendation. It is clear from the record and Detective Jimenez's discipline history that his repeated actions concerning off-duty involvement in police related matters, in which he or his family members are personally involved, necessitates a greater and more serious penalty.

Therefore, having considered the totality of the issues and circumstances in this matter regarding the misconduct for which Detective Juan Jimenez has been found guilty, as well as Detective Jimenez's overall discipline history, I have determined that Detective Jimenez shall be immediately Dismissed from the Department.

A handwritten signature in black ink, appearing to read "Dermot Shea".

Dermot Shea
Police Commissioner



POLICE DEPARTMENT

August 23, 2021

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In the Matter of the Charges and Specifications : Case No.
- against - : 2019-21096
Detective Juan Jimenez :
Tax Registry No. 932829 :
Military and Extended Leave Desk :
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Arlia, Esq.
Wenger & Arlia, Esqs., LLP
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To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Detective Juan Jimenez, while assigned to the Special Victims Division, while off-duty, on or about July 23, 2019, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit: said Detective used his hand to touch the buttocks of an individual known to the Department less than thirteen years of age.

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GENERAL REGULATIONS
SEXUAL ABUSE IN THE FIRST
DEGREE
ENDANGERING THE WELFARE
OF A CHILD

2. Said Detective Juan Jimenez, while assigned to the Special Victims Division, while on Suspension Duty Status, on or about November 6, 2020, in Kings County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department to wit: said Detective represented himself as an on-duty Member of the Service assigned to Special Victims Division to an individual known to the Department to gain information regarding to his own personal matter unrelated to the Department. (*As added.*)

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT –
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 6 and July 8, 2021. Respondent, through his counsel, pleaded Not Guilty to the subject charges. The Department called Maryan Dumas and Detective Pascale Denis as witnesses. Respondent called [REDACTED] and [REDACTED], and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Not Guilty of Specification 1. I further find him Guilty of Specification 2, and recommend that he forfeit ten (10) vacation days.

ANALYSIS

This case arises out of a hearsay allegation of forcible touching levied by Respondent's [REDACTED] neighbor (the minor-complainant), a friend of Respondent's young daughter who would visit his residence and accompany their family on outings from 2017 to 2019. The minor-complainant's initial allegation referenced a singular incident, but over the course of an interview, her narrative evolved and described a pattern of escalating incidents.¹ Respondent, who was arrested and whose criminal case was dismissed when a grand jury returned no true bill, denies any inappropriate behavior. Respondent is also charged with representing himself as an on duty officer to employees at a children's trampoline gym in order to gain information during his criminal and family court cases. He acknowledges going to the gym to obtain his attendance record and identifying himself as a detective, but denies any improper motive or effort to influence those employees.

The minor-complainant was interviewed at Safe Horizon in Brooklyn on September 25, 2019, [REDACTED]. The interview, which took place from 10:00 p.m. to 11:30 p.m., is the only recorded statement from the minor-complainant. She was interviewed one-on-one by a woman named [REDACTED], and the interview was observed by others, including IAB officers, over closed circuit cameras. The minor-complainant was made aware of the cameras at the outset; she appeared intrigued by the cameras referring to them as "so suspicious." (Dept. Exs. 1A at 1:40-3:05 & 1C at 2-3).

For about six minutes, the interviewer asks the minor complainant general questions about her life, her likes and dislikes, and a recent vacation. (Dept. Exs. 1A at 3:05-9:28 & 1C at

¹ It is noted that Specification 1, as amended February 25, 2021, (a date long after the interview of the minor-complainant took place) charges Respondent with a singular incident taking place on or about July 23, 2019, when he used his hand to touch the minor-complainant's buttocks.

4-11). The interviewer then transitions to go over the structure of the interview but the minor-complainant begins asking about the lights on the cameras again; the interviewer tries to redirect. The minor-complainant remains fixated on the cameras saying, "They've been watching me. I feel creeped." The interviewer says that if the minor-complainant wants, she can meet the individuals on the other side of the cameras at the end of the interview. She pauses briefly and quietly asks, "Are they police?" The interviewer replies there are some police and the minor-complainant says, "I don't like police." She says she is "just scared" and has a weird feeling around police, "I just don't get along. If I see one on the street I would say hi...I probably think they're laughing right now." The minor-complainant then redirects the conversation and asks the interviewer what she was saying before. (Dept. Exs. 1A at 9:30-10:59 & 1C at 11-12).

The interviewer begins by telling the minor-complainant that if she does not know the answer to a question, she should just say she does not know. The minor-complainant cuts in and asks, "[A]re you only going to ask me questions," and the interviewer tells her it will be "a mixture of questions and statements." She goes on to tell the minor-complainant that "whatever me and you say tonight together has to be true and real," and asks, "Do you feel like you could promise me to tell the truth? The minor-complainant scrunches her face and says, "I don't know. I don't know. It depends on what it is... Like if you asked me a question that I won't say...like would you be mad?" The interviewer assures her she would not be mad, but she might try to figure out "why you don't want to tell me." She then asks, "If you decide to answer a question, do you promise the answer you give me will be true?" The minor-complainant says, "I don't understand." The interview repeats the question; the minor-complainant says, "Yes...depending on what the question is." (Dept. Exs. 1A at 11:00-15:11 & 1C at 13-17)

The interviewer then asks if there is a time "you would tell me a lie," and the minor-

complainant says, "Yes. I'm being honest." The interviewer thanks her for her honesty, and asks what about telling the truth is hard. The minor-complaint explains, "I don't usually tell the truth. I know it causes consequences ...so like I have to tell the truth. But like sometimes I don't know if I want to. I'm not sure if I actually want to say that. It depends on what the question." The interviewer says that if there is something she does not want to answer, she should say she does not want to answer rather than telling a lie. The minor-complainant says, "Mm-hmm." She agrees with a statement by the interviewer that it would be a fair way to proceed. They then briefly discuss a pool party she recently attended. (Dept. Exs. 1A at 15:13-16:10 & 1C at 17-18)

After about twenty minutes the interviewer suggests, "[W]hy don't we talk now about what we're here to talk about." The minor-complainant pauses and says, "My neighbor (who she later identified as [REDACTED])...It was nothing serious. Like, I love his kids because his kids are like so cute...His wife is actually very nice to me. He's nice but I don't know what made him do that that day." The interviewer asks if "this" happened one time or more than once, and the minor-complainant responds, "Once...That's it." (Dept. Exs. 1A at 23:21-24:03 & 1C at 27-28)

The interviewer tells minor-complainant to tell "the whole story" from "the beginning," trying not to leave anything out. The minor-complainant says, "I went to his house and...his kids when they see me they like get crazy. They love me. Like I'm their play toy. .. I got there and then by the night, he just started drinking, but he doesn't get crazy when he drinks...nothing really happened, like he was just trying to hug me and stuff. He was acting weird around me. His wife was laying down. He asked me to put his kids to bed. So I did that and he just like grabbed me, he hugged me, and then he was like oh, oh, give me a kiss in his mouth." The minor-complainant said she was "confused and shocked," and, laughing and smiling, recalls that she made a joke that she could not because he had bad breath. According to the minor-

complainant, Respondent “just like kicked me out of his house. He took me out of his house, no apparent reason.” (Dept. Exs. 1A at 24:04-26:02 & 1C at 28-29)

The interviewer then begins to ask what day of the week this happened and the minor-complainant, looking down, interjects, “Oh and he always grabs my butt...I don’t know why but... he always asks me to help him with his daughter’s homework and so I bend down...low like for little kids... I have to help both of them and he just put his hand on my butt, that was weird...His wife was in the kitchen with one of her cousins or friends...she didn’t know anything about that.” The minor-complainant, still looking down, goes on, “He always like grabbed my butt and tries to pull my pants down, from the back not the front...he never tried to touch me like down there, he just tries to pull my pants down and he tries to pull my bra down that’s it. And he forces me to do it, but I said no. He forces me to pull my pants down and my bra, but I say no.” (Dept. Exs. 1A at 26:15-27:25 & 1C at 29-30)

The minor-complainant explains that she tried to “think smart” and stay by Respondent’s wife. She recounts, “Like I didn’t tell nothing to his wife because then probably... I’ve seen a lot of TV, movies...that their husband does something to the kid and then the wife is over here complaining that that’s fake... I don’t want to tell nothing to her because then he’s probably going to do something to me...You know, so like, I got to also think smart while I’m doing my moves so that’s why I thought I just stand by his wife...” (Dept. Exs. 1A at 27:26-28:02 & 1C at 30-31)

On further questioning, the minor-complainant specifies this happened in the living room while his children were present. When asked how Respondent grabbed her butt, the minor-complainant replies, “His hands...He was squeezing it, and then he just started to lay on it. He put his hands to lay on my butt...he just like moves around.” The interviewer asked if this

happened over or under her clothes. The minor-complainant quickly responds, “[O]n top. If it was under, I would like...NOT (emphasis added) accept that. I would tell him not to do that. And I would probably never go to his house, but he never did that. So I don’t do nothing because he’s stronger than me.” She adds, “He had problems with my brothers too. I don’t know if you heard about that...And he’s really strong. He was holding my hands up, and I couldn’t like (garbled) like move nothing. So I didn’t want to do. I didn’t want to see nothing. I just let him do it because I was scared at that moment.” (Dept. Exs. 1A at 28:44-30:32 & 1C at 30-34)

The interviewer then asks about the minor-complainant’s allegation that Respondent forcibly pulled her pants down; she replies, “No, no. That was another time. That was like...I don’t know, but he usually tries to pull down my bra or my pants, and I just tell him no.” The interviewer then says to stick to this specific time when she was helping Respondent’s children with their homework and asks how she put them to sleep. She states, “Mm-hmm, I just do it and I said bye...I was going to my house.” Spontaneously, she continues, “Sometimes he tries to get on me and his kids are there. And the kids like try to hit him....I was like ‘oh help me, help me, get him off. Tell him to get off me.’ Like you know because they don’t know anything... I also hit him because we joke around... and tell him to get off me. And one day he put me on the bed and he was trying to hump me...but he didn’t actually hump me...he was just like... playing I guess.” She stated her eight-year-old male cousin was present one time and saw this happen. The interviewer asks when and where Respondent “humped” the minor-complainant; she replied, “In his bedroom and whenever his wife goes to the bathroom, that’s when he does that.” The interviewer repeats, “You said he humped you?” and the minor-complainant answers, “He didn’t

actually...but he just um put me on the bed...he didn't actually do it. He just with his clothes on...like pushing me. (Dept. Exs. 1A at 30:47-32-32:50 & 1C at 34-36)

The interviewer again redirects to the time she put Respondent's children to bed and asks where his wife was; the minor-complainant says she was laying down in bed but not asleep. Unprompted she continues "And like that's when he grabbed me and tried to kiss me... and tried to pull my pants down." The interviewer asks her to described how he tried to kiss her, and she gestures that he puts his face and lips close to her and said "okay, kiss me kiss me." The minor-complainant details that she closed her lips and Respondent "still actually" kissed her with her lips closed. The interviewer then asks the minor-complainant to tell her about Respondent trying to pull her pants down. She responds, "[O]ne day we were in the kitchen and his wife was like all the way in her bedroom like changing...he went behind me and he tried to pull my pants off ...and he was so strong" that he ripped her pants, which caused her to be "in shock." On questioning from the interviewer, the minor-complainant then clarifies this was a "different day" than the one where she put Respondent's children to bed and he tried to kiss her and grabbed her buttocks. She then refers to the bedtime incident as "the night that he was drunk" and added that Respondent "always" tries to kiss her when she leaves his apartment. The interviewer then asks about what Respondent's hands do when he tries to kiss her, she pauses and says sometimes they are behind his back; sometimes they are on her face (gesturing). The interviewer then interjects and asks what his hands were doing "the time he was drunk;" the minor-complainant looks briefly confused. She pauses, then looks down, then replies, "He was grabbing my butt" with both hands and "squeeze hug[ing] me." Spontaneously, the minor-complainant redirects the conversation and asks the interviewer, "[S]o do you want me to tell you about the beach?" The interviewer asks her to finish telling how the alleged kissing incident ended; the minor-

complainant says it ended when Respondent “just said like ‘okay bye.’” (Dept. Exs. 1A at 33:00-36:19 & 1C at 37-40)

The conversation then turns to a trip the minor-complainant took to the beach with Respondent’s family². She appears animated, smiling and eager to detail this part of her account, and is making direct eye contact with the interviewer. She begins recapping, “So the next morning, I wake up so happy (gesturing excitedly and smiling), I forget about what happened yesterday...I’m like focused... And he just texts me...oh and his wife.” She explained she had had blocked Respondent, but thought he was able to see that on WhatsApp and began texting her “[W]hy did you block me?” She further details the alleged text exchanges about the beach trip, “On his wife’s phone, he was like—she was like, ‘Alright come to the beach with us.’ ...She—he was like ‘Oh you don’t have a bathing suit.’ And I was like no because I never knew we were going to the beach. I knew we were going to the beach. And I was just lying because like I didn’t want to go the beach with him.” Respondent told her would pick her up at her mother’s hair salon and then buy her a bathing suit at Target. (Dept. Exs. 1A at 36:20-37:35 & 1C at 41-42)

The minor-complainant said she felt scared and was shaking when he came into the salon, but she continued washing a customer’s hair. Respondent kissed her mother and then her on the forehead. She told her mom that she did not want to go to the beach, but her mom encouraged her, saying “[Y]ou should go because like you don’t know if he’s going to give you something, because he always gives me stuff like gifts...[her mom] said go, go, just go. You never know if he’s going to buy you something to eat...” (Dept. Exs. 1A at 38:25-39:34 & 1C at 43)

² She estimated this beach trip was July 2019. She came home from [REDACTED] on June 23, 2019. (Dept. Exs. 1B at 5:12-5:56 & 1D at 7-8)

She remembered Respondent “look[ing] at me weird” as she got in his car. She was thinking, “Okay, first thing, you’re done. I’m like counting what he does...he just looks me the whole way. Well he’s actually driving...but when he’s at a red stop light he just stops and looks at me from...the mirror that looks at the back.” She was sitting in the back with his daughter and tried to look away as he stared. She noted his wife was in the middle row with their son. (Dept. Exs. 1A at 39:37-40:30 & 1C at 44-45)

She states that the bathing suit they bought her was tight, and “my butt, it was like half showing. And then I saw him recording me [on his phone]...when I was just like walking with his kid to get water from the beach.” She then goes on an aside about “little tiny fishies in the water” before redirecting herself “okay back to the story.” She asserted that she heard Respondent tell his wife, “[L]ook babe [minor-complainant’s] getting a waistline.” His wife did not respond, and the minor-complainant thought, “this is starting to get weird.” (Dept. Exs. 1A at 40:35-41:42 & 1C at 45-46)

Respondent then approached her on the beach and hugged her from behind and said, “[H]i, how are you doing?” Talking to him was awkward and weird, but when he tried to talk to her, she responded because “I’m not a weird person” and “I can’t stay quiet... I have to say hi even [if] I don’t like the person.” After this, Respondent gave her a towel to dry off, and they went home. She spontaneously added, “He wasn’t even paying attention to his wife...but he was like kissing her and stuff.” (Dept. Exs. 1A at 41:42-42:35 & 1C at 42, 46)

The interviewer then asks generally, “Does he ever talk to you about what he’s doing?” The minor-complainant replies, “He was like...when he was on the bed and kids were there, he was like ‘oh this is how you hump dry people.’” She asked the interviewer if she knew what hump drying was, and the interviewer shook her head. The minor-complainant explains, “When

you hump people with their clothes on...And they're not actually doing it you...just like with clothes on. He was like 'this is how you hump dry a person. So when you have a boyfriend...when you're older, you can learn.'" She told Respondent, "I don't want to know about that now... why don't you do this with your wife?" Respondent replied, "Because I don't want to." The minor-complainant recalled thinking in her head "why me," though she stated she would feel bad "for the other ones" if it was not her. The interviewer then asks if Respondent showed or demonstrated hump drying; the minor-complainant replied, "No, no he didn't actually do it. He just did it with his clothes on. And while his kids were trying to take him off. And he actually didn't and then he was like 'okay bye' that's it." (Dept. Exs. 1A at 42:36-43:54 & 1C at 46-48)

The minor-complainant was then hesitant to reveal where Respondent lived. When asked, she smiled and, evading eye contact, stated she did not know if she was "supposed to give you that information," and said that she was not a person who told things without permission. Immediately, she then stated that he lives [REDACTED]

[REDACTED]³ During this exchange (10:53 p.m.), the minor-complainant's mother knocks, wanting to go home to her other child and noting it is a school night. The interviewer says there is "a lot to talk about," and the mother says she will call someone for the minor-complainant. They resume and the minor-complainant details that she met Respondent's family at [REDACTED], and notes that her aunt babysits "one of his grandsons [actually godson]." She met Respondent when he was picking him up to go to the zoo at the aunt's home and the minor-complainant, who was nine years old at the time, asked if she could come. (Dept. Exs. 1A at 45:50-49:40 & 1C at 48-51)

³ Later in the interview, the minor-complainant says she forgot to tell her Respondent's last name. She provides the name of his wife and children as well. (Dept. Exs. 1B at 11:00-12:00 & 1D at 11-12)

The interviewer next asks about “the first thing” she remembers regarding Respondent touching her, and she replies, “He used to grab my butt a lot...that’s the thing.” She estimated she was 11 years old when it started, and it always took place in Respondent’s home. The interviewer continued this line of questioning asking if there was ever a time that was “different” and when was the last time the touching happened. The minor-complainant is not responsive to the question and instead states, “Right now we’re not usually talking because he usually works,” and explains that she only gets to see their family on weekends. She tells the interviewer, “He’s probably going to ask me if I have any plans on Saturday or Sunday. What do you think I should say to him?” The interviewer asks her what she wants to tell him, and the minor-complainant replied, “If it’s something I really want to go to, I’d probably just say yes...even though like he did that like...you know.” (Dept. Exs. 1A at 49:50-52:16 & 1C at 51-53)

The interviewer again tries to return to the topic of Respondent pulling minor-complainant’s pants down. The minor-complainant states that she wore short pants because she liked to be comfortable. The interviewer asks what Respondent would do when he pulled her pants were down. At this point, the minor-complainant puts her head on a blanket on the table, and after a pause replies that he would squeeze her butt and touch her waistline before she pulled them up. When asked about her underwear, she replies, he “sometimes” pulled them down too. She was again asked if there was ever a time he did anything “different,” and she replies, “He tried to pull my bra down...It was that day that he was drunk. He tried to pull my bra down, and he was squeezing my titties. But like I was in shock.” The interviewer asks whether his hands were over or under her clothes and “sometimes he does it under, but that day I think it was like he did it really quick so it was like...he took it off.” The interview repeats the same question and

she replies, “sometimes it was on and sometimes off.” The minor-complainant is still laying her head on the table and complains her head hurts. (Dept. Exs. 1A at 52:17-55:20 & 1C at 53-57)

She is asked about the frequency of her visits to the home. She replies that she is there “each Saturday and Sunday” and “sometimes after like I get out of school...when he comes from work” because the babysitter does not like her and says she is “really annoying.” The interviewer asks if they text a lot; she says “not usually,” but he sometimes texts her “how are you doing?” She is asked if he ever texts her about the touching, she replied he texted that he loves her. The interview asks what he meant by that; she replied, “I don’t know...what I’ve seen so far...how can you love me and do that to me?” When asked if he ever sent her pictures, she said family photos but “nothing sexually.” She also mentions that he blocked her on WhatsApp because she used to “annoy him” and message him when he was at work. (Dept. Exs. 1A at 55:25-57:08 & 1C at 57-59)

When asked where Respondent works, the minor-complainant said she thought he was a detective (gestured in air quotes) because “his kids say he is and he has guns and everything.” She recalled seeing him show a gun to his wife. She also stated unprompted that she found handcuffs once when she was looking through his clothes drawer. She called him and asked if he had kids’ “pretend handcuffs,” and he asked if she was going through drawers. She also stated that he had a Taser and a “fake play toy gun.” (Dept. Exs. 1A at 59:04 & 1C at 59-61)

The interviewer then asks about gifts; the minor-complainant starts looking at the cameras and asks where her mom is. She also begins commenting that the interviewer has saggy eyes with bags. The interviewer redirects and asks about the gifts he gave her; the minor-complainant mentions he gave her boys’ sneakers that did not fit and toys so she can play with his daughter. He gave her money three times, twice at the movies so she and his daughter could

call a taxi if they got lost and \$25.00 dollars for her birthday. The interviewer asks if he ever gave her money after he touched her; the minor-complainant asks, “Isn’t that called threatening...because you said like, so he gave me something so he could do something to, me?” She then says “No,” confirming to the interviewer that never happened. (Dept. Exs. 1A at 59:04-59:23; 1B at 0:01-1:30 & 1D at 2-3)

The interviewer next asks minor-complainant to tell her again about the time she said Respondent was “strong and he held her hands.” The minor-complainant says, “Yeah. He was holding my hands when he was trying to pull my pants down...He just grabbed my hands like down...They were together behind my back. And then he was pulling my pants down, I got time to pull them back up because he let go of my hands. Because he couldn’t while he was pulling my pants down.” The interviewer then asks if Respondent’s clothes were on; the minor-complainant is non-responsive and says, “he’s always like trying to touch me.” She then pulls on the blanket and buries her face in her knee; the interviewer repeats the same question. This time, the minor-complainant provides an entirely new detail when she replies, “[U]sually when he finishes taking a bath, he usually changes his clothes like in front of me. And he doesn’t ever say cover your eyes to me.” When asked if she saw his whole body, she replies, while still burying her face in her knee, “I don’t look. He wants me to look ...because he’s doing it in front of me. He does it...he looks at me...he turns his private part forward to me (mumbling).” She is asked if Respondent has underwear on and further details, the minor-complainant says, “Nooo (emphasis added). When he looks at me, that’s when he just finished taking a shower and he doesn’t have no clothes on. Nothing on, he faces forward and his private part is facing me. And I look away because I don’t want to see that.” The minor-complainant is asked whether

Respondent does “anything to his private part”; she responds, “I don’t see.” (Dept. Exs. 1B at 1:32-4:01 & 1D at 3-5)

The minor-complainant asks multiple times for the time and when they will be done; she then comments it is “still early.” The interviewer asks why she talked about this when she did; she says she could not “hold it to myself” and she is not the type of person to hold things in. She needed to tell somebody and “let it go for a little bit.” (Dept. Exs. 1B at 4:02-5:00 & 1D at 5-6)

She is then asked if at any point “his private went anywhere else, anywhere in your body.” She replies, “Never. If he did I would (emphasis added) tell his wife. I’m not scared to tell his wife. I just didn’t want to tell his wife because I know she wouldn’t believe me.” She said if that had happened she would have been shocked and “first of all” called the police and then told his wife. She was then asked if Respondent ever made her do anything to his “private part” or showed her anything “he wasn’t supposed to;” she said no both times with her head in her knee. The interviewer, before taking a break, gave her the opportunity to add anything that was “missing” or ask any questions, but the minor-complainant just told the interviewer that she liked her name and thought she was pretty before putting her head down on the table. (Dept. Exs. 1B at 6:25-7:54 & 1D at 8-10)

The interviewer asks the minor-complainant if she has talked to her mom about this before, the minor-complainant offers, “No, I was actually scared, that’s why I went to my school counselor.” When asked what made her scared, she replies, “I wasn’t scared, I just like didn’t know how to tell her...I didn’t feel comfortable.” She is then asked if she told a friend. She says Minor D, who she explains is not a school friend but someone she met through Respondent. She calls Minor D, [REDACTED], “the only person I trust.” She recounts that when she told her, [REDACTED] was “in shock” and said, “[O]h my god I feel bad

for you..." [pause]...and suggested she tell her mom or a school counselor. (Dept. Exs. 1B at 12:36-15:08 & 1D at 13-16)

The minor-complainant was then asked if she had ever talked to anyone else about this; she responds, "I asked my friends like what would you do if a 30-year or 40-year-old man was like starting to hump you, dry hump you with your clothes on, and they said 'I don't know, tell your mom.'" She went on unprompted, "I'm just not that type of person, like I'm a Virgo, so like I know Virgos really like to cry but I'm not that sensitive a person. I'm more a person that doesn't cry for things. My mom likes to cry, so that's why I didn't want to tell her...I trust her, I just didn't feel comfortable to tell her." Finally, the interviewer asks if she ever heard that Respondent did this to anyone else and, without making eye contact, she replies, "That's what I'm worried about; I don't want anybody else...I don't think so it was only me I guess." She then looks up and asks, "So what are you going to do?" The interviewer responds that this is her "whole job... this is it. I don't know what they're going to do..." The minor complainant cuts in and asks more about the cameras; she asks for candy; the interviewer says there are chips, which she says she does not like. The interviewer asks if she has any last questions and the minor-complainant says no; the interview ends at 11:23 p.m. (Dept. Exs. 1B at 15:10 17:33 & 1D at 17 19)

[REDACTED], a guidance counselor at [REDACTED] testified that she provides group and classroom counseling at the K-8 school. She first met the minor-complainant as a second grader in 2014, and knew her mostly through classroom guidance lessons. She had spoken to her once one-on-one about a peer issue in 2018. (Tr. 34-39)

On September 25, 2019, the minor-complainant came into her office, appearing worried and scared, and asked, "[H]ow can someone go to jail?" [REDACTED] recounted that from there,

she alleged that her neighbor had inappropriately touched her left breast and “dry humped” her. She subsequently specified that the minor-complainant “had only said that it happened one time” and that a friend had encouraged her to tell a counselor. [REDACTED] who noted that she was a mandated reporter in New York, told the school principal, and they then called Child Protective Services. She also called the minor-complainant’s father, who came to the school and was “shocked” when she advised him of the allegation. On cross, she did not recall whether the father indicated if he believed the allegation. (Tr. 40-42, 46, 50-53)

Child Protective Services arrived at the school, and [REDACTED] sat in on their interview as “moral support for the student.” She followed up with the minor-complainant later the same week, and recalled that she was “still worried and concerned.” They had no further one-on-one conversations. [REDACTED] also testified before the Kings County grand jury. (Tr. 42-45)

The lead investigator Detective Pascale Denis of IAB Group 41 provided details about the investigation. She explained that after the minor-complainant’s “outcry” and identification of Respondent, she received a phone call from Special Victims advising that the accused individual was a Member of Service. She was made aware that the minor-complainant was at the Brooklyn Child Abuse Squad and a forensic interview was about to be conducted by Safe Horizon, and traveled to the location to observe the interview in real time on a screen. (Tr. 58-62)

Detective Denis recalled that the interview took place at night and the minor-complainant appeared tired and her demeanor was that of a child who was in an unfamiliar location after a long day. She did not feel that the minor-complainant’s statements at the beginning of the interview where she refused to promise to tell the truth raised any red flags. When asked about how the minor-complainant’s account evolved to include new details about Respondent exposing

himself to her, Detective Denis stated, “I think she becomes comfortable with the interviewer and starts to give more details.” (Tr. 64-65, 124-25, 127-30)

After the interview concluded, she intended to speak to the minor-complainant’s mother, but the mother indicated it was late and she wanted to leave. A conferral was conducted with the Kings County District Attorney’s Office, and the minor-complainant was also interviewed there. Detective Denis did not sit in on that interview and it was not recorded. After that interview, she spoke with an ADA, who advised her that Respondent was going to be arrested, and Detective Denis participated in the arrest on September 27, 2019. (Tr. 67-69)

Detective Denis learned that Respondent and the minor-complainant lived in the same building and that she had been in his residence and went on outings with his family on multiple occasions for a few years. She testified that she made many attempts to speak with the minor-complainant and her family. She never spoke to the father and the mother was “uncooperative.” She “eventually” spoke to the minor-complainant, but said when they finally connected, she was “withdrawn, somewhat despondent.” She was present at the minor-complainant’s apartment when she made a confirmatory identification of Respondent. She said the mother was “very upset” because she felt intimidated seeing Respondent around the common areas of the building. Detective Denis tried to obtain the clothes the minor-complainant was wearing during the relevant time period from the mother, but was unsuccessful. She also testified on cross that she made multiple attempts to speak to neighbors but was unsuccessful getting any neighbor to speak because Respondent had lived in the building for his entire life. She did not document any of these attempted visits to the building to try to speak with neighbors. (Tr. 70-76, 109, 113-15)

Detective Denis was unable to obtain any of the texts or social media messages that the minor-complainant claimed existed between them. She testified that the minor-complainant had

been using her mother's phone and it was too damaged when they tried to retrieve the old messages. She tried to subpoena text messages and found nothing containing the words "I love you" from Respondent to the minor-complainant, as was claimed. She also did not locate any photos of the minor-complainant's body on any of Respondent's devices. (Tr. 115-17)

On cross, Detective Denis was asked if the mother ever told her directly that she did not believe her daughter or if the family court monitor had ever told Detective Denis that the mother did not believe her daughter. Detective Denis stated that "at no point" did the mother tell her that directly, and the family court monitor simply told her the mother was uncooperative. She stated that she investigated defense counsel's claim that the minor-complainant had recanted and did not receive a recantation from the court nor from the minor-complainant. (Tr. 92-99)

Defense counsel also asked if Detective Denis ever spoke to the [REDACTED] who the minor-complainant claimed on the recorded interview witnessed Respondent touching her inappropriately. She acknowledged she had not. She confirmed that she also did not speak to "Minor D," the friend that the minor-complainant claimed was the first person she told. She only recalled hearing that the minor-complainant made an "outcry" to the guidance counselor, who she interviewed. Detective Denis participated in a family court forensic interview of Respondent's children; she did not ask Respondent's daughter about the minor-complainant's allegation that she and her brother had been present when their father "dry humped" the minor-complainant or whether she had observed any inappropriate behavior between her father and the minor-complainant. Detective Denis offered that purpose of this interview was not to ask questions about the case but to make sure Respondent's children were safe. (Tr. 100-07, 118-22)

When asked on cross if her Commanding Officer made a recommendation in this case, she confirmed that he had but stated she "[did not] know what the recommendation was at this

time." When asked if the recommendation was that Respondent be restored to full duty, Detective Denis stated the CO did not express that to her at the GO-15 or any time after. When she was asked again if he ever voiced that recommendation her, she said she did not recall. (Tr. 143-46)

Detective Denis testified before the grand jury, which ultimately returned no true bill. The family court petition, which existed because Respondent had minor children, and because he resided in close proximity to the minor complainant, was also fully withdrawn. (Tr. 72-74, 137)

With respect to Specification 2, Detective Denis explained that there was a subsequent allegation that Respondent violated an Order of Protection by taking the minor-complainant to BounceU, a children's trampoline gym. On November 6, 2019, Detective Denis received a call from Special Victims, who had received a call from BounceU "in regards to a male who entered the establishment...identified himself as working for Special Victims and requested to take a photograph of a child's schedule." She met with a BounceU employee, [REDACTED] who provided a post-it note the male had left behind with Respondent's name and personal phone number. [REDACTED] "stated that at some point he Googled his name on the [post it] and found that this individual had been arrested for an offense...against the child." [REDACTED] also identified the minor-complainant by name as the child that Respondent wanted a schedule for. Respondent was suspended from duty at this point and was not working for the Department or carrying a shield. (Tr. 77-82, 138-39)

Respondent denied any and all inappropriate touching or behavior. Preliminarily, he testified that he has been [REDACTED]

[REDACTED] He has been a New York City police officer for 18 years and for the four years prior to his arrest had been assigned as a Special Victims Detective in the Sex Offense Monitoring

Unit. He characterized himself as a “subject matter expert when it came to sex offenders,” with specific experience in apprehensions. (Tr. 157-61)

At the outset of his testimony, Respondent explained that the minor-complainant was a neighbor who was friends with his daughter. He testified that the allegations were untrue and that he had never once been alone with the minor-complainant. Specifically, he denied ever inappropriately touching the minor-complainant, dry humping her, attempting to kiss her, exposing himself to her or attempting to pull her pants down. He called her allegation that she said he wanted her and not his wife “ridiculous.” (Tr. 162-68)

In response to the minor-complainant’s allegations that the inappropriate touching would occur when his wife was in the kitchen or bathroom, Respondent explained that he lives in a small three bedroom, 500 square foot apartment where you can hear everything that is going on even with doors closed. He testified that he worked long hours and his wife was the primary caretaker of their children and supervised all play dates, setting up structured activities. His father also lived with them, and he would shower in the bathroom attached to his father’s bedroom with the door locked and would fully change before emerging into the apartment. This is also where he kept his firearms. His children were not allowed in this room and his wife rarely entered. (Tr. 165-68, 209) He did not believe the minor-complainant was ever even at their home when he was showering. (Tr. 212-13) When asked if the minor-complainant was ever a babysitter for his children, Respondent stated, “No, that’s ridiculous. My wife always supervised the play dates.” (Tr. 211-12)

Respondent was asked about the minor-complainant’s home and family life. He stated her parents work long hours and she was not constantly supervised. He first met the minor-complainant when she arrived [REDACTED] in 2017 and his father, who knew

█████ from the building, arranged for her to join them on an outing to a petting zoo. As she became friendlier with his daughter, she accompanied them on more outings. He also referenced a concerning domestic incident with the minor-complainant's brother, which he characterized as "the straw that broke the camel's back." After that incident, he and his wife noticed an increase in her use of profanity. They did not entirely cut her off so as not to make her feel bad, but started to significantly limit how much she came over and how much she talked to their daughter. (Tr. 173-77, 192-97, 203-07)

Respondent detailed that in June 2019, the minor-complainant went on a trip █████

█████ when she returned, "We noticed a difference in her maturity. She was on another level of life at that point when she got back. The way she spoke, the music she listened to, the way she carried herself, the way she dressed. The difference in maturity with my daughter was apparent and we decided to put a distance on her." She spoke about having a boyfriend and, at that point, they allowed her even less access to their home and their daughter, approximately five occasions in total. Respondent detailed that he had a conversation with the minor-complainant's father about how he and wife were tired of "being the bad guys" and barring her from coming over. He encouraged the father to say "no" more often. She was last at his residence the Sunday before he was arrested in September 2019. (Tr. 177-179, 207-08, 227-29)

With respect to the beach trip, he disputed the minor-complainant's allegation that he invited her, and said, "She's lying." He claimed she begged his daughter to go with them, and he and his wife relented when she said she had permission from her mother. When they arrived to pick her up, the mother seemed "ambushed," and the minor-complainant did not have a bathing suit. He disputed that she was working in the salon washing hair, and stated that they were going

to leave without her, but their daughter began to cry. He denied “obsessively” looking back at her in the rear view mirror; she was seated in the back row of their minivan, his wife was seated in the front, and he was focused on the road. He denied ever commenting on her waistline or any part of her body and denied taking any photographs of her at the beach. Any photos he had of her were if she posed with his children. (Tr. 169-73)

Regarding texting and messaging, Respondent testified he had “very rarely” communicated with the minor-complainant through a joint Instagram he shared with his wife, and, at times, on WhatsApp when she wanted to ask to come over and play with his daughter, though most of those questions went to his wife. The minor-complainant became “obsessive” with contacting him and his wife, and they blocked her on WhatsApp and Instagram in May 2019. He detailed it “got ridiculous,” as he felt the minor-complainant was putting a guilt trip on him and his wife texting, “You guys don’t love me anymore. I need help. I need people.” He specified that his wife blocked her first so she began contacting him, which led him to ignore and then eventually block her after a few weeks. He explained that they were trying to gradually distance themselves, rather than cut off all communication. He testified that he did not realize at that time that the “distance we put on her would ever lead to this outrageous allegation...the two-year nightmare that me and my family have gone through.” (Tr. 186-87, 198-205, 231-32)

After his arrest, all his family and friends blocked her. Respondent testified that at some point, his daughter reached out to the minor-complainant on “Roblox” in 2020. She had been “sheltered” from the allegations and missed her friend. Respondent turned this exchange over to his attorney because he “had concerns” and believed it was a recantation. (Tr. 187-89)

Respondent denied any physical contact with the minor-complainant with the exception of occasionally giving her a hug. He acknowledged he had told her he loved her in response to

her saying it to him at Christmastime after he gave her a gift, but in “no romantic way.” He agreed that he and his wife bought her food if she was out with their family. If he bought his daughter a toy in her presence, he and his wife bought her one too to include her. They also bought Christmas gifts for the minor-complainant and her brother, but did not get them birthday gifts, provide her with money, or give her clothing besides hand me downs from his wife. (Tr. 208-11, 225-26)

He was asked specifically about his understanding of “grooming,” which he defined as “pick[ing] a victim....where you want her to be available to you sexually as she ages...Provide gifts, get them against their parents, spend a lot of time with them, become more personal...They can do a certain number of things to gain trust,” including buying gifts and food. He testified that a groomer’s communications are “secret[], not as open, not as revealing,” and adamantly asserted, “If you’re trying to say that about me, no. Everything I did was with my family, my wife, my children, my father, my godson...[groomers] don’t put a distance. They don’t set rules...groomers do not involve more than themselves and that person.” (Tr. 220-27)

Regarding the Order of Protection that was in place following his arrest, the minor-complainant made two allegations that he violated the Order when he took her to BounceU with his children and that he approached her in a Chinese restaurant when she was with her grandmother. Respondent stated these allegations were “totally untrue.” There was an emergency court session. On a break, his attorney advised him to go to BounceU and obtain written information pertaining to his and his family’s attendance for the past weekend. Respondent confirmed he went and told the BounceU supervisor that he was “a detective from Special Victims,” who was there “off-duty...on a personal matter concerning my family.” He asked for his attendance record; the employee told him there was no record of him attending that

weekend. He asked for written confirmation, and she stated he would need to contact their corporate office. He filled out some forms and left his contact information. He did not recall if he wrote "Detective," but denied that he was trying to influence the BounceU employees by holding himself out as a detective or an investigator. Ultimately, no violation of the Order of Protection was sustained. (Tr. 181-86)

Respondent acknowledged that he understands in retrospect why the BounceU employees were concerned. He offered that he was emotional and bared his situation to the BounceU employees, explaining he was there in his capacity as a customer, specifying that he was off-duty and trying to get personal information because he was about to be arrested on a false violation of an Order of Protection when he was innocent. He stated that even though he was suspended, he still considered himself an NYPD detective and that was how he had always introduced himself. He said he was emotional and desperate, but that he had no malicious intent and did not lie to the employees. (Tr. 215-19)

Respondent's wife, [REDACTED] also testified before the Tribunal. [REDACTED] works for the City as a fraud investigator and was a foster care caseworker from 2008 to 2014, doing home visits and interviews with children who had been abused or neglected. (Tr. 237-39)

[REDACTED] corroborated significant portions of her husband's account. She denied ever witnessing anything inappropriate. She asserted there was "never an instance" her husband was alone with the minor-complainant. She was the "main person" supervising the girls' play dates; she would plan structured activities like drawing, baking cookies, and would stay in the room with the girls. [REDACTED]

[REDACTED] She emphasized that their apartment is very small and even if she stepped away briefly for a minute or two to the bathroom or kitchen, she would hear everything

that was going on. She acknowledged on cross that inappropriate contact with children can happen quickly, but when asked if there was even a scintilla of a chance that she missed something, she stated assuredly that she had not and “[i]t could have never happened.” She never noticed any changes in the minor-complainant’s behavior or demeanor after she would step away for a moment; she would be “perfectly happy playing.” (Tr. 240-45, 278-79, 285-86)

She described her daughter’s initial friendship with their daughter as typical, playing princess dresses, dolls, and games. She would set up playdates either with the minor-complainant’s mother or sometimes the minor-complainant would message her if she was using her mother’s phone asking if she could come over, and she would confirm with the mother. She estimated they spent time with the minor-complainant “every weekend, every other weekend” starting in 2017 and continuing in 2018. (Tr. 249, 268-71)

Like her husband, [REDACTED] detailed putting a gradual and then a total distance on the minor-complainant in 2019 after she began exhibiting troubling behavior, especially after she came home from a trip to [REDACTED]. She became “very rude” and “very nasty.” Specifically she would show up their home dressed inappropriately and curse at their daughter and other children. She called their daughter a “spoiled fucking brat” and messaged a family friend’s son that “he has a little dick” and “he sucks dick.” When asked why she did not immediately cut off contact, [REDACTED] testified that her daughter and the minor-complainant had been “really, really close;” that her daughter would cry about missing her, and that the minor-complainant was a ‘little girl’ and she was not trying to make her feel bad. (Tr. 246-52, 272)

She recalled the minor-complainant becoming “very obsessive” and messaging her and her husband constantly on social media, calling and texting in the middle of the night. It became

“very ridiculous” and she and her husband decided together that they would block her “at the same time.” To her knowledge, there was no subsequent messaging with her or her husband but she continued messaging their daughter, asking to come over and apologize, which they allowed.

[REDACTED] and the minor-complainant’s mother had a conversation and she unblocked her for a period of time. (Tr. 263-65, 273-77)

Similar to Respondent, [REDACTED] acknowledged that they would purchase the minor-complainant things to include her. If they were out with her and bought their daughter a Barbie or an ice cream, the minor-complainant got one too. (Tr. 252-53)

Regarding the beach trip, she similarly testified that the minor-complainant called incessantly asking their daughter to come and she felt bad and relented. When they arrived to pick her up, it was clear her mother was unaware of the plan. She denied that her husband was obsessively looking at the minor-complainant on the drive, recalling that she was sitting in the middle with her carsick son, which would have given her the opportunity to observe if he was looking back. Her husband never made comments to her about the minor-complainant’s body as alleged. (Tr. 254-60, 277-78)

The defense presented three other witnesses; [REDACTED] who testified she used to be minor-complainant’s best friend; [REDACTED] who testified that Respondent and his wife are her best friends; and [REDACTED], who testified that he is [REDACTED].

[REDACTED] who described minor-complainant as a toxic person, testified that minor-complainant, who was her best friend for six months, never told her she was physically or sexually abused by Respondent, nor did [REDACTED] ever advise minor-complainant to go speak to any teacher. [REDACTED] knows Respondent as her cousin’s child’s godfather. (Tr. 295-302)

[REDACTED] testified that she was present in a park with minor-complainant's father and [REDACTED] on October 1, 2019. Since the father only spoke Spanish, [REDACTED] translated for [REDACTED]. She stated that the father told them that minor-complainant told her mother that she lied and her friends had told her to say the things she did. According to [REDACTED], minor-complainant's father believed his daughter lied. The conversation was not recorded. (Tr. 327-331, 345)

[REDACTED] who stayed with Respondent and his wife at times while she was unemployed, also testified that she was present for the trip to the beach with Respondent's family and minor-complainant. She testified that it was minor-complainant who repeatedly asked to go to the beach with Respondent and his family. She also stated that it would have been impossible for Respondent to be staring at the minor-child during the car ride to the beach because [REDACTED]. [REDACTED] was sitting next to him in the car and would have noticed it. She further testified that Respondent did not make any comments about minor-complainant's body while at the beach nor did she see him take any photos of minor-complainant's body. (Tr. 335-338)

[REDACTED] testified that he approached his cousin, minor-complainant, on July 5, 2021, and showed her a document he received from Respondent, who lives in the same building as him. The document is a printout of a purported chat between the minor-complainant and the Respondent's daughter (Resp. Ex. A). Respondent asked him to talk to minor-complainant to get her to confirm that she was one of the participants in the chat. Mr. Lopez testified that he showed minor-complainant the document, and she admitted she was one of the participants in the chat. (Tr. 308-316)

The parties entered into a Stipulation regarding Resp. Ex. A., which stated that if called, Respondent's daughter would testify that she was one of the participants in the chat and that she believed she was chatting with minor-complainant. (Tr. 233-35)

Resp. Ex. A, which was admitted into evidence, contains the following language:

From the account alleged to belong to Respondent's daughter: "Why did you lie about us?"

From the account alleged to belong to the minor-complainant: "i didn't know my friends were going to lie...why did you kick me out of your house... in adopt me...but i shouldn't never told nobody nothing...i know i messed up but i regret it everyday...but im trying my best for nothing to happen to u...or ur family."

From the account alleged to belong to the daughter: "Did You tell your friend a lie about us and they told people? Why don't you tell the truth so we can talk again?"

From the account alleged to belong to minor-complainant: "that's going to be hard because I don't know how to do that."

The messages go on in a similar vein over the course of three days.

The Tribunal did not give any weight to Resp. Ex. A in analyzing the case. Even assuming the two people chatting were minor-complainant and Respondent's daughter, there is nothing in the chat that allows the Tribunal to determine the two people are talking about any lie relevant to the incident charged in this case.

Specification 1

This charge involves the most serious and sensitive type of allegation, the forcible, sexual touching of a child. The Department has presented a hearsay case based on a single recorded interview of minor-complainant conducted by Safe Horizon and a report to a school counselor.

Hearsay is admissible in administrative proceedings and may form the sole basis for a finding of fact. *See* 38 RCNY § 15-04 (e); *Gray v. Adduci*, 73 N.Y.2d 741, 742 (1988); *Dep't of Correction v. Jackson*, OATH Index No. 134/04 at 4-5 (May 5, 2004). However, where hearsay is controverted and outcome dispositive, particular scrutiny must be paid to determine if the hearsay is reliable. *See Disciplinary Case No. 2018-18572* (April 29, 2021), citing *In re Matter of 125 Bar Corp. v. State Liquor Auth. of the State of N.Y.*, 24 N.Y. 2d 174 (1969). The more important the evidence is to the case, the more critically it should be assessed. *See Admin. for Children's Services v. Lowe*, OATH Index Nos. 1342/16 & 1904/16 at 9 (Oct. 19, 2016), aff'd, NYC Civ. Serv. Comm'n Case No. 2016-1051 (Mar. 31, 2017), quoting *Calhoun v. Bailar*, 626 F.2d 145, 150 (9th Cir. 1980); *Police Department v. Acosta*, OATH Index No. 464/00 (Jan. 7, 2000).

In this specification, the hearsay evidence is outcome dispositive as the Department is relying on hearsay to prove the charge, and Respondent has testified that he is not guilty of using his hand to touch the buttocks of the minor-complainant. Upon careful scrutiny, I find that the hearsay evidence presented is not sufficient to meet the Department's burden of proof for Specification 1.

The Tribunal recognizes the unique challenge of assessing the credibility of a 12-year-old. Uncertainty or inconsistent trial testimony from a child would not automatically preclude the Tribunal from finding the child to be a competent witness. The test of a child's competency as a witness is always an individual one (*see generally* Prince, Richardson on Evidence § 6-106, at 314-315 [Farrell 11th ed]).

In this case, notwithstanding the special considerations involved in evaluating a child's testimony, the Tribunal finds that minor-complainant's testimony falls far short of that of a competent and reliable witness.

This Tribunal cannot be confident of the reliability of the minor-complainant's statements concerning Respondent for several reasons. The primary reason is that the minor-complainant could not assure the interviewer from Safe Horizon that she would not lie to her. The minor-complainant directly states that there are times she would tell the interviewer a lie. Despite attempts by the interviewer to move the minor-complainant to a position of agreeing that rather than lying she would simply not answer a question, the minor-complainant never clearly verbalizes her promise to do this. She merely agrees with the leading statement of the interviewer that it would be a fair way to proceed. This may have been sufficient to continue an intake interview at Safe Horizon, but it falls far short of an affirmative commitment to tell the truth as is required in an administrative tribunal.

If minor-complainant had appeared to testify, the Tribunal could have probed her ability to comprehend the requirements of providing testimony under oath. Her appreciation of the necessity of telling the truth as well as her capacity to do so could have been further tested. Unfortunately, without this opportunity to hear the minor-complainant swear to tell the truth and being further able to question her to determine her ability to provide reliable evidence, the Tribunal is left with her statements that she does sometimes lie and would lie to the interviewer. The Tribunal does not find her assent to a statement that not answering a question instead of lying is a fair way to proceed gives the Tribunal sufficient confidence that her statements concerning Respondent's alleged inappropriate behavior are true.

Additionally, the Tribunal found that another troubling aspect to the statements made by minor-complainant is the way the incidents she describes continue to escalate throughout the interview. She begins by describing an incident that happened “once,” during which Respondent grabbed and hugged her and tried to kiss her. She similarly told the counselor at her school that an incident with Respondent only happened once. During the course of the Safe Horizon interview, however, minor-complainant described Respondent as “always” grabbing her butt and trying to pull her pants down. Minor-complainant adds incidents during which Respondent humped her in front of his children and also came out of the shower naked and “wants” her to look at him.

While it is certainly possible that during an interview a victim may add more details as they become more comfortable with the interviewer, that is not the picture presented in this case. Minor-complainant appears comfortable with the interviewer from the start of the interview. She does not appear upset at any point, but rather seems to be embellishing stories as a means to continue the interview. Minor-complainant also fails to make eye contact during serious parts of the conversation. It is always beneficial to have live witnesses, but in this case, given the significant concerns presented by the singular recorded account, an opportunity to observe the minor-complainant at trial and see how she responded to cross-examination would have been critically important.

Finally, the Tribunal noted that there was no corroboration for the minor-complainant’s statements concerning Respondent’s alleged inappropriate behaviors, either from physical or testimonial evidence. Detective Denis was not able to obtain any ripped clothing as described by the minor-complainant or any text messages containing the words “I love you” from Respondent to the minor-complainant, as was claimed. She also did not find any photos of the minor-

complainant's body on any of Respondent's devices. (Tr. 116-18) She also did not obtain any statements from either the cousin or Respondent's children, who minor-complainant identified as being present for some of the incidents she described.

The Tribunal further notes that [REDACTED] did testify, and she also failed to corroborate the minor-complainant's story. [REDACTED] refuted minor-complainant's two assertions that she told [REDACTED] that she was physically or sexually abused by Respondent, and that [REDACTED] advised minor-complainant to go speak to any teacher.

The Department's case as presented to the Tribunal, therefore, was simply unreliable and uncorroborated hearsay.

In contrast to minor-complainant's hearsay statement, Respondent and his wife testified and were both subject to cross-examination. While they obviously are interested witnesses with a huge stake in the outcome, they presented a plausible and consistent narrative of trying to include a young neighbor who befriended their young child in outings and playdates. Their firm insistence that any food or gifts purchased were simply in an effort to include the minor-complainant when she spent time with their family very much had the ring of truth, as did their explanation that they distanced their daughter from the minor-complainant when the two-year age difference with their daughter became more pronounced as the girls grew up. To the extent that there were very minor inconsistencies in their testimonies, such as where the wife sat in the van on the beach trip and the timing of blocking the minor-complainant from contacting them, those are the kinds of slight deviations to be expected over the passage of time and, if anything, suggest that they were not straining to be over rehearsed and in sync on every detail. Finally, I note that Respondent's insistent and at times exasperated responses were indicia of an individual who was truly upset and angry to be accused of heinous acts that he had not committed.

Accordingly, I find Respondent not guilty of Specification 1.

Specification 2

In November 2020, it was alleged that Respondent violated a valid Order of Protection by taking the minor-complainant to BounceU, a children's trampoline and recreational facility. Respondent is charged with engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by representing himself as an on-duty Member of the Service assigned to the Special Victims Division to gain information from BounceU employees related to the alleged violation. It is not contested that he was suspended on the date in question. No BounceU employee testified, nor is there any documentary evidence related to this charge. The Department has put in hearsay through Detective Denis' recounting that the BounceU employees, in their interviews, detailed that a male individual came into BounceU, identifying himself as a Special Victims detective and asking for the minor-complainant's attendance record.

Respondent admitted that on a recess break from the emergency hearing on the Order of Protection, he went to BounceU and "as a customer," asked for his attendance record in an effort to prove he had not been there with the minor-complainant days before. He insisted that he told the employees he was off-duty and on a "personal matter," but acknowledged he had identified himself as a detective with Special Victims, who was facing arrest on a personal matter, and left a piece of paper with his contact information. He testified that in retrospect he realized why this conversation had been concerning to the employees, but contended he had no malicious intent and was truthful in what he told them.

Because of the lack of evidence, it is impossible to know whether Respondent specifically represented himself as an "on-duty" detective. Based on Respondent's admissions though, I find that this attempt to obtain information from BounceU constituted conduct

prejudicial to the good order, efficiency and discipline of the Department. There was quite simply no reason for Respondent to identify himself as a “Special Victims” detective, or as an NYPD officer at all, if he was just trying to obtain his personal customer attendance record; one would imagine his name, photo ID, phone number, email and/or any credit card on file might be the most pertinent information for that purpose.

Even if he had no nefarious motive, it appears that he believed he might be aided more promptly and thoroughly if he presented as an NYPD Special Victims detective. It is also unclear why his wife, who he testified always attended BounceU with him, or his counsel could not have attempted to get this information. While the Tribunal can appreciate his testimony that he was stressed and emotional, he was in such a state because he knew it was possible he was about to be re-arrested imminently. It was extremely poor judgment for him in that moment to present himself as a Special Victims detective at a children’s establishment when he was actually a suspended officer⁴ charged with a violation against a child. It also must be noted that his actions on this day at a local business in Brooklyn reflected quite poorly on the Department and were to the prejudice of good order, discipline, and efficiency of the Department. Accordingly, I find Respondent guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s

⁴ The Department offered no specific protocol or regulations for suspended officers regarding identification. The Tribunal takes judicial notice of Patrol Guide section 206-08, which states only that suspended officers must not dress in uniform.

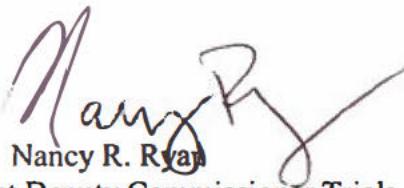
employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent was appointed to the Department on July 1, 2003; the Department has recommended that he be terminated based on the more serious specification of which he was found Not Guilty. The Disciplinary Guidelines have no set penalty for the specific offense related to his attempt to gain information by representing himself as a Special Victims detective while suspended to obtain information on a personal matter, but do provide a penalty range of training to termination for prejudicial conduct, depending on the facts and circumstances of the case. *See* Disciplinary Guidelines at 44.

Analogous precedent is also limited. In 2016, an officer forfeited 20 vacation days for (i) conducting an independent investigation into a criminal matter while off-duty, and (ii) wrongfully representing himself as an investigating NYPD officer while off-duty. *See Disciplinary Case No. 2015-14503* (Nov. 17, 2016). After a family friend was arrested for petit larceny, that officer went to the store's loss prevention officer, represented himself as the investigating officer and requested surveillance footage, which he later turned over to the friend's attorney. That officer was not suspended but merely off-duty at the time. However, that officer more directly interfered in a pending criminal matter, was blatantly dishonest with store employees, and was more directly using his status as a Member of Service to obtain information he was not entitled to for a third party.

Based on the facts and circumstances in this case, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,


Nancy R. Ryan
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

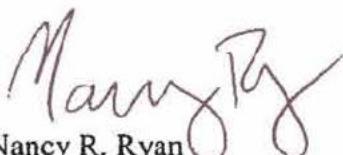
From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE JUAN JIMENEZ
TAX REGISTRY NO. 932829
DISCIPLINARY CASE NO. 2019-21096

Respondent was appointed to the Department on July 1, 2003. On his three most recent annual performance evaluations, he twice received 4.0 overall ratings of "Highly Competent" in 2013 and 2015, and received a 3.0 overall rating of "Competent" in 2014.

In 2020, Respondent forfeited 30 vacation days and was placed on one-year dismissal probation after he was found Guilty of (i v) wrongfully using force, in that he pointed his gun at five individuals without police necessity, and (vi-x) arresting said five individuals without sufficient legal authority.

In connection with the instant matter, Respondent was suspended on September 27, 2019; he remains suspended to date.

For your consideration.



Nancy R. Ryan
Assistant Deputy Commissioner Trials